



FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35762]

South Carolina Division of Public Railways, d/b/a Palmetto Railways—Intra-Corporate Family Transaction Exemption—The Port Utilities Commission of Charleston, S.C., Port Terminal Railroad of South Carolina, and East Cooper and Berkeley Railroad Company

South Carolina Division of Public Railways, d/b/a Palmetto Railways (SCPR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(3) for an intra-corporate family transaction.

According to SCPR, it owns the rail trackage and other physical assets of Class III rail carriers The Port Utilities Commission of Charleston, S.C. (PUCC), Port Terminal Railroad of South Carolina (PTR), and East Cooper and Berkeley Railroad Company (ECB), and it employs the workers on those railroads. Applicant explains that although PUCC, PTR, and ECB do not exist as separate, formal corporate or governmental entities but rather as the equivalent of divisions of SCPR, they have historically been treated as separate regulated entities.¹

¹ See Public-Convenience Application of Port Utilities Comm'n of Charleston, S.C., 90 I.C.C. 743 (1924) (certificate issued to PUCC to acquire and operate certain railroad terminal facilities in Charleston, S.C.); Port Terminal R.R. of S.C. Operation, 295 I.C.C. 819 (not printed in full, Aug. 6, 1956) (PTR obtained authority in its own name to operate trackage owned by the South Carolina State Ports Authority in North Charleston); The E. Cooper & Berkeley R.R.—Constr. & Operation—Line of R.R. Located in Berkeley Cnty., S.C., FD 28100 (ICC served July 15, 1977) (ECB obtained authority in its own name to construct and operate an approximately 15-mile rail line in an area north of Charleston); South Carolina Rys. Comm'n v. Seaboard Coast Line R.R., 365 I.C.C. 274 (1981) (PUCC and PTR described as terminal switching carriers); East (continued . . .)

SCPR proposes to: (1) eliminate PUCC, PTR, and ECB as separate rail carriers, which have been operating as Applicant's divisions; and (2) consolidate their distinct common carrier authorities into Applicant, which will operate and market all of the rail lines under the name "Palmetto Railways." SCPR states that the proposed transaction will clarify ambiguities regarding the regulatory status of PUCC, PTR, and ECB.

This exemption will become effective on September 29, 2013. SCPR states that it intends to consummate the proposed transaction on October 1, 2013, but may not do so prior to the September 29, 2013 effective date of the exemption.

Applicant states that the purpose of the proposed transaction is to clarify the regulatory status of SCPR's rail operations and simplify various administrative and marketing functions.

This is a transaction within a corporate family of the type exempted from prior review and approval under 49 CFR 1180.2(d)(3). SCPR states that the transaction will not result in adverse changes in service levels, significant operational changes, or any change in the competitive balance with carriers outside the SCPR corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees.

(. . . continued)

Cooper & Berkeley R.R.—Construction & Operation Exemption—In Berkeley Cnty., S.C., FD 32704 (ICC served Dec. 13, 1995) (ECB granted an exemption to construct and operate a 1.7-mile single track rail line in South Carolina); and Port Terminal R.R.—Operation Exemption—Rail Line of the Charleston Naval Complex Redevelopment Auth., FD 35211 (STB served Feb. 19, 2009) (PTR granted an exemption to operate a rail line on the former Charleston Naval Base).

Section 11326(c), however, does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III rail carriers.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than September 20, 2013 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35762, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606.

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Decided: September 10, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig

Clearance Clerk

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